

Department of Water Resources

Testimony on Hearing to Reconsider the Conditional Approval of the 2005 Water Quality Response Plan for use of Joint Points of Diversion by the United States Bureau of Reclamation and the California Department of Water Resources ¹

Background

As mandated by the State Water Resources Control Board (SWRCB), the Department of Water Resources (DWR) and the United States Bureau of Reclamation in coordination with South Delta Water Agency and Contra Costa Water District developed a Water Quality Response Plan (WQRP) to protect these senior water right users in the event the State Water Project (SWP) or Central Valley Project (CVP) were to engage in Joint Point of Diversion. The latest version of this plan was submitted to the SWRCB April 25, 2005, and conditionally approved by the SWRCB Chief of the Division of Water Rights on July 1, 2005. Shortly thereafter four parties petitioned the SWRCB to reconsider the approval based upon on these conditions. On September 22, 2005 the SWRCB issued Order WR 2005-0024 which provisionally granted the approval of the WQRP with the exclusion of Condition 1.

1. If the SWRCB does not adopt the May 3, 2005 Cease and Desist Order, DWR supports the July 1, 2005 conditional approval of the WQRP with minor modifications to Condition 1.

During the first part of this Hearing, DWR argued against the adoption of the CDO. If the CDO is not adopted, DWR would support a revision to the WQRP approval to emphasize the need for installation of the permanent gates. Condition 1 of the approval letter makes reference to the time schedule established in the Draft CDO related to the installation of permanent gates. If a final CDO is not adopted, the Department would support emphasis be drawn to meeting this schedule by including the scheduling language in the body of the approval. Consequently, paragraph 1(a)(i) on page 2 of the approval letter would read as follows:

“Prior to January 1, 2009, DWR and USBR may conduct JPOD diversions if they meet an EC objective of 1.0 mmhos/cm at compliance locations C-6, C-8, and P-12 (San Joaquin River at Brandt Bridge, Old River near Middle River, and Old River at Tracy Road Bridge), and if they have submitted to the Division Chief a detailed schedule, including planned completion dates for key events leading to completion of the permanent gates by January 1, 2009. If the schedule provides for implementation of equivalent measures, DWR (and Reclamation) shall submit information establishing that those measures are equivalent to the installation of

¹ Presented by John Leahigh, DWR Engineer, Chief of SWP Operations Planning Branch.

permanent gates. The schedule is subject to approval by the Executive Director of the State Water Board in regard to its completeness and the inclusion of significant project milestones. DWR (and Reclamation) shall submit any additional information or revisions to the schedule requested within the period specified by the Executive Director. DWR (and Reclamation) shall implement the schedule as approved by the Executive Director.”

2. Effects if Condition 1 is included in the Approval of the WQRP.

In addition, as DWR has consistently argued in the previous CDO testimony and in its February 14, 2005 Change Petition, no harm has been demonstrated in connection with the continuance of the 1.0 mmhos/cm objective. Delay of the effective date of the 0.7 EC objective will not injure other legal users of water because existing conditions would not change. No unreasonable effects on fish, wildlife, or other instream beneficial uses would result from the delay because existing conditions would not change.

3. Effects if Condition 1 is excluded in the Approval of the WQRP

If the need to change the schedule for implementing the 0.7 EC objective is not recognized as part of the approval for the WQRP, other beneficial users of water are likely to be adversely impacted. The WQRP establishes necessary conditions to allow DWR and USBR's use of joint point of diversion. In addition, the SWRCB has also made adherence to the WQRP a requirement for other non Project transfers in the Delta. These transfers are extremely important in supplementing water supplies for agricultural, municipal, and industrial water needs south of the Delta in years when Project supplies are limited by hydrology. In addition the Environmental Water Account (EWA) relies more heavily on the use of north of Delta purchases in drier year types. The ability of the EWA to acquire these assets is key to its effectiveness in protecting Delta fishery. As discussed during the previous testimony on the adoption of the CDO, it is likely that the 0.7 EC objective will be exceeded under certain conditions until installation of the permanent gates. This means that in drier years when the need for supplemental supplies south of the Delta is greatest the Projects could be prohibited from conveying this critical alternative supply. Although DWR will have an opportunity to provide a report to the SWRCB showing why conditions for the exceedence are beyond its control, DWR believes it is inappropriate to be continuously faced with threat of enforcement when it is reasonable to adjust the schedule for implementing the objective with the schedule for implementing the gates.

Therefore, the recognition of the need for a delay in implementation of the 0.7 EC objective, as is included in Condition 1 of the July 1 approval letter, is essential to avoid significant harm to other beneficial users of water.

4. If the SWRCB does adopt the May 3, 2005 Cease and Desist Order, DWR supports the July 1, 2005 approval of the Water Quality Response Plan including Condition 1.

DWR does not support adoption of the proposed Cease and Desist Order. However, if it is adopted, the DWR believes that the SWRCB Division Chief's approval that includes Condition 1 provides adequate protection for other Delta water users during DWR and USBR's use of Joint Points of Diversion. Condition 1 is consistent with DWR's February 14, 2005 Petition to change the effective date of 0.7 mmhos/cm until the anticipated installation of the permanent operable barriers (gates) in the south Delta. As stated in the DWR's earlier testimony on the adoption of the May 3, 2005 Cease and Desist Order, this is consistent with the SWRCB's past plans and analysis that always linked implementation of the 0.7 mmhos/cm objective to the installation of physical facilities. As demonstrated in the previous testimony, the Temporary Barrier Program is quite limited in its ability to circulate water in the south Delta. In fact, the SWRCB recognizes in Decision 1641 that with the temporary rock barriers, and even with permanent operable gates, DWR may not always be able to control water quality in the south Delta (D-1641, p. 8-12, 79, and 86-87).

Conclusion

Therefore, if the CDO is not adopted the DWR supports the including the terms of Condition 1 provided by the Chief of the Division of Water Rights in her July 1, 2005 letter with a slight modification to emphasize the need for timely installation of permanent gates. Although it has not been demonstrated that the inclusion of Condition 1 in the approval of the WQCP will injure other legal users of water or the environment, it is likely that exclusion of Condition 1 will cause significant harm to other legal users and the environment. If a CDO is adopted, DWR supports the approval by the Chief of the Division of Water Rights in her July 1, 2005 approval of the Water Quality Response Plan.